IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1645 OF 2005
[FOR LEAVE TO APPEAL]

Smt.Savita Shrirang Chavan. ..Applicant.
Versus
1. Shri.Dattatraya Vitthal Jagtap,&
2. State of Maharashtra. ..Respondents.

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Mr.Manoj M. Kadam, Adv. i/b. Mr.Pratap Patil, Adv. for the Applicant.
Mr.Sachindra B. Shetye, Adv. for Respondent No.1.
Mrs.A.S.Pai, APP, for Respondent No.2-State.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATE : DECEMBER 04, 2007.

P.C.:

1. The applicant-orig.complainant has filed this application for leave to appeal against the judgment and order of acquittal dated 12.10.2004 passed by the learned IIIrd Extra Jt. District Judge and Addl.Sessions Judge, Pune in Criminal Appeal No.322 of 2003. By the said judgment and order, the learned Sessions Judge acquitted the respondent of the offence punishable 406 of IPC.

2. The amount involved in the present matter is only Rs.1750/-. It is the case of the complainant that she had filed a maintenance

application against her husband. Respondent No.1-orig.accused was representing the complainant in the said matter. In the said maintenance application Rs.1750/- came to be deposited by the husband of the complainant. It is the case of the complainant that the said amount came to be misappropriated by the respondent. Hence, she filed complaint against the respondent on 17.1.1986. The said complaint came to be withdrawn by her as there was compromise arrived at between the parties. However, according to the complainant the respondent did not fulfil the terms of compromise agreement. Hence she filed a second complaint against the respondent on 5.8.1989.

3. Heard the learned Advocate for the applicant-orig.complainant, the learned Advocate for respondent No.1-orig.accused, and the learned APP for the State. I have perused the impugned judgment and order as well as the record in the present case.

4. From the evidence on record, it is seen that the complainant-Savita was aware of deposit

of the amount from time to time by her husband towards her maintenance. There is an application dated 1.11.1982 in recovery proceeding M.A. No.119 of 1982 filed by her husband-Shrirang seeking time to pay the arrears of maintenance after depositing Rs.100/- and stating that earlier he had deposited Rs.1750/-. On the said application, Say was given under the signature of the complainant-Savita herself whereby she acknowledged that Rs.1750/- were deposited towards arrears by her husband prior to the said date. The copy of the said application is on record at Exh.101 and 119. Besides these applications, there is one more application dated 19.1.1983 filed in the same recovery proceeding bearing M.A. No.119 of 1983 by the complainant-Savita herself wherein she has categorically stated that in recovery application M.A.No.1526 of 1981, Rs.1750/- were deposited by her husband. The copy of the said application is on record at Exh.102 & 120. All these applications have been admitted by the complainant in her evidence. Therefore the claim of the complainant that for the first time in the year 1985 she had gathered the knowledge of deposit of amount of Rs.1750/- by her husband and

withdrawal of the same by her counsel, cannot be believed. It is an admitted fact that the amounts were withdrawn by the respondent as per the authority given by the complainant herself. On this aspect there is no dispute. However, claim of the complainant is that she came to know about deposit of amount in the year 1985 and the respondent had withdrawn the said amounts without her knowledge and misappropriated the same. From the discussions above, it is clear that she was aware of deposit of amount of Rs.1750/- in the year 1982 as well as in the year 1983. Therefore, her claim that for the first time she came to know about deposit of the amount in the year 1985, cannot be believed. The learned Sessions Judge has taken all these aspects into consideration and had thereafter acquitted the respondent-accused.

5. Looking to the record, I am of the opinion that the view taken by the learned Sessions Judge is a reasonable and possible view.

6. It is well settled that if the view of acquittal could have been reasonably arrived at then mere circumstance that the lower Court would

have taken a different view, would be no ground to interfere. In this connection, there is no dearth of authorities but to eschew prolixity, I am referring to only two of them i.e. **AIR 1971 SC 66 Khedu Mohton and Ors. Vs. State of Bihar and C.Anthony Vs. K.G.Raghavan Nair, (2003) 1 SCC 1**. In the case of **C.Anthony**, the Supreme Court has observed that unless the findings of the trial Court are perverse or contrary to the material on record, the High Court cannot in Appeal substitute its findings, merely because another contrary opinion was possible on the basis of material on record. As stated earlier, the view taken by the learned Sessions Judge is a reasonable and possible view, hence, no interference is called for. Application for leave to appeal is rejected. Consequently, Appeal also stands dismissed.

(SMT.V.K.TAHILRAMANI,J.)